STATE OF MICHIGAN

COURT OF APPEALS

DEPARTMENT OF HUMAN SERVICES and WAYNE FASE, Petitioners-Appellants, v RICHARD ERDMAN, Respondent-Appellee.	UNPUBLISHED September 18, 2007 No. 266791 Ingham Circuit Court Family Division LC No. 2005-001934-DS

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Petitioners appeal as of right from the order of the family division of the circuit court setting respondent's child support obligation in connection with his minor daughter at zero. We affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

The child was born in 1998. The child's mother initially had physical custody, and she and respondent agreed that the latter would not pay any child support. The mother later lost custody as the result of child protective proceedings. The child was placed with petitioner Fase and his wife, the maternal great-grandparents. At the time of the order appealed from in this case, the custody matter remained open, and respondent was entitled to parenting time.

The trial court concluded that respondent should have no financial obligation for child support on the grounds that his medical records "indicate that he suffers from a variety of nuerological [sic] and cognitive disorders that substantially impair his ability to work," and thus he "cannot earn enough money to support himself at a minimal level" and "is not capable of paying child support." In its remarks from the bench, the court also noted that respondent had significant expenses in connection with his medications.

"It is well settled that children have the right to receive financial support from their parents and that trial courts may enforce that right by ordering parents to pay child support." *Borowsky v Borowsky*, 273 Mich App 666, 672-673; ___ NW2d ___ (2007). "However, once a trial court decides to order the payment of child support, the court must 'order child support in an amount determined by application of the child support formula . . . .'" *Borowsky*, *supra* at 673, quoting MCL 552.605(2). A court may deviate from that formula if the court "determines from

the facts of the case that application of the child support formula would be unjust or inappropriate . . . ." MCL 552.605(2).

A trial court's decision to deviate from the child support formula is reviewed for an abuse of discretion. *Borowsky, supra* at 672. "An abuse of discretion occurs when a court selects an outcome that is not within the range of reasonable and principled outcomes." *Id.* The court's factual findings for the purposes of determining the child support amount are reviewed for clear error. *Id.*

Petitioners argue that the trial court failed to satisfy all the requirements set forth in MCL 552.605 in determining respondent's child support obligation. The statute requires a court deviating from the formula to state what the formula ordained, the extent of the deviation, the values of any non-cash awards, and the reasons why application of the formula would be unjust or inappropriate. MCL 552.605(a)-(d). We agree that the trial court did not perfectly set forth the information as required by the statute, but we regard its substantial compliance in this instance as sufficient.

The trial court listed a recommendation under the formula as $266 per month in base child support, plus $24 per month for health care, thus impliedly adopting the prosecuting attorney's recommendation. Petitioners suggest that this recommendation was probably erroneously high, having been calculated on the basis that respondent could earn $15,000 per year, and state that respondent's unrebutted testimony put his income at $8,800 per year, or $733 per month. Petitioners cite a page of the hearing transcript in support of the latter figures, but respondent's testimony was unclear, and we could not find definite figures anywhere in the transcript.[1] For these reasons, we reject petitioners' argument that the trial court failed to state what the obligation would be under the child support formula.

The trial court did not state what the difference was between what the child support formula indicated and what was actually ordered, but we are untroubled that the court did not separately specify that the difference between the recommendation amount and zero actually awarded equals the recommendation amount. Similarly, that the court did not provide any values for non-cash awards is of no moment, because there is no indication that any non-cash awards are at issue here. To remand this case to have the trial court add information to its order that is so obviously ascertainable from what the order already indicates would be to elevate form over substance.[2]

---

[1] Respondent testified that the $15,000 total did not include the material expenses involved with his contracting business, but he provided no elaboration. He also stated that in the prior year he "put in [his] pocket about 800 bucks," but he was not clear regarding from where the eight hundred dollars derived.

[2] What this Court had to say about overly fastidious insistence on formal adherence to certain minutiae of sentencing procedure seems on point here: "To . . . require . . . verbal descriptions of obvious mental processes . . . elevates form over substance and creates an unnecessary burden to an already overformalized record-making procedure." *People v Bowens*, 119 Mich App 470,

(continued…)

We agree with petitioners that the trial court's findings concerning respondent's physical and mental limitations on his ability to generate income merely detail a consideration already accounted for in the child support formula. See *Burba v Burba (After Remand)*, 461 Mich 637, 648-649; 610 NW2d 637 (2000) (disapproving of the use of a factor accounted for in the formula as a reason for deviating from the formula). However, petitioners admit that respondent's extraordinary medical expenses could justify a deviation.[3] We agree that respondent's expenses in attending to the plethora of medical conditions about which he testified – testimony the trial court credited – support the court's decision to deviate from the formula. Although the court emphasized those conditions' affects on respondent's ability to earn money, it also noted that those expenses burdened respondent's ability to support himself. The court stated that defendant was "able to earn income which is barely sufficient to pay for part of his living expenses as well as his extensive medications." Respondent's heavy medical expenses, in light of his modest income, put the trial court's decision to depart from the child support formula, and enter an award of zero, within the range of principled outcomes.[4] See *Borowsky, supra* at 672. We cannot find an abuse of discretion in light of the existing record.

Affirmed.

/s/ Patrick M. Meter
/s/ Karen M. Fort Hood

(…continued)

474; 326 NW2d 406 (1982) (internal quotation marks and citation omitted).

[3] The dissent claims that "[t]he medical expenses referred to are already taken into account by the formula . . . ." The dissent provides no citation for this statement, and it is unclear to us where the formula takes into account these expenses. See 2004 MCSF § 2.01 *et seq*. In fact, the standards for *deviating* from the formula specifically contemplate taking into account whether "[o]ne or both parents have incurred, or are likely to incur, extraordinary medical expenses either for themselves or a dependent." 2004 MCSF 1.04(D)(5)(h).

[4] We note that, while the court may also take into consideration the best interests of the child, this standard is not a stand-alone criterion. This consideration is to be examined in light of other considerations; here, the trial court considered respondent's numerous health problems and large medical costs. See 2004 MCSF 1.04(D)(5).